

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Forbearance Under 47 U.S.C. § 160 (c)	)	WC Docket No. 05-170
From Application of Unbundling Rules that Limit	)	
Competitive Alternatives	)	
_____	)	

**REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> submits its reply comments through the undersigned in the above-referenced docket. As stated in USTelecom’s comments, the Federal Communications Commission (FCC or Commission) should deny the Petition for Forbearance because forbearance is not the appropriate method for reconsidering previous Commission decisions that eliminated certain unbundling obligations. Because incumbent local exchange carriers (ILECs) are no longer required to unbundle the network elements that are the subject of the Petition, there are no affirmative regulatory obligations from which to forbear. Forbearance only makes sense in the context of affirmative regulatory obligations.

The essence of the Petition is an attempt to take the proverbial “second bite of the apple,” but through improper means, in order to persuade the Commission to regulate ILECs in a way that it already decided not to regulate them. The fundamental premise for granting forbearance is to promote competition *and reduce regulation*. It is very clear from the comments filed by a number of competitive local exchange carriers (CLECs) that the intent of the Petition is to pervert what is supposed to be a pro-competitive, deregulatory tool to re-hash and re-argue issues

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<sup>1</sup> USTelecom is the nation’s leading trade association representing communications service providers and suppliers for the telecom industry. USTelecom’s carrier members provide a full array of voice, data, and video services across a wide range of communications platforms.

decided in the Triennial Review Remand Order. Once again, these CLECs argue that they are impaired without access to the unbundled network elements (UNEs) at issue in the Petition and by being subject to the eligibility criteria set by the Commission to obtain Enhanced Extended Links (EELs). They continue to maintain that they are impaired in these instances when the Commission has found they are not.<sup>2</sup> If the Commission grants forbearance, finding the impairment alleged, CLECs will have succeeded in circumventing the regulatory process and the

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<sup>2</sup> For example, PaCLEC states, “Under the Commission’s existing regulations . . . EELs cannot be used by CLECs that are providing data service without voice service. This constitutes a severe impediment to the growth of CLECs is [sic] smaller communities and, of course, removes competitive alternatives from businesses and consumers in those communities.” PaCLEC Comments at 2.

Similarly, Covad argues that “the current wire center test essentially forecloses CLECs’ ability to serve all predominantly residential and small office buildings in a given wire center simply by virtue of the aggregate number of business lines and fiber-based collocators in that wire center.” Covad Comments at 3. With regard to the dedicated transport cap for DS1/DS1 EELs, Covad maintains that “the cap harms competition by artificially and arbitrarily limiting access to efficient network arrangements and unreasonably decreasing the scope of services that CLECs would otherwise provide.” *Id.* at 4. Finally, with regard to EEL eligibility criteria Covad states that “the existing eligibility criteria limit the use of UNEs to provide competitive and data and advanced services such as Internet telephony and other IP-enabled services to the detriment of competition and the consumers who would otherwise benefit from such services.” *Id.* at 5.

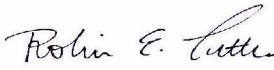
*See also, generally, Eureka et al. Comments*, which attempt to disguise their support of re-regulation as merely an opportunity to “refine” the Commission’s approach or to “fine tune” its application. The intent to re-argue impairment becomes crystal clear when these commenters state that “CLECs are impaired with respect to pre-dominantly residential and small office buildings even if they might not be impaired with respect to other buildings service by a wire center” under the Commission’s wire center approach for access to DS1 loops. *Id.* at 5-6. Similarly, they state that the “requested forbearance would only *modify* application of current rules . . . .” *Id.* at 6 (emphasis added). Similar to the comments filed by Covad, the Eureka *et al.* commenters claim the DS1 transport cap “imposes extremely high economic and operational barriers on CLECs.” *Id.* at 9. Finally, with regard to EEL eligibility criteria, the Eureka *et al.* commenters claim that “continuing to apply the EEL restrictions to CLECs will have the opposite result [of encouraging development of broadband services] and/or simply foreclose CLEC participation in the broadband market.” *Id.* at 12-13.

Commission will have established new precedent that it can use a forbearance proceeding to impose new regulations or, as in this case, to impermissibly re-impose unbundling obligations where no impairment exists. USTelecom urges the Commission to make clear that forbearance may not be used as a means of increasing regulation.

USTelecom continues to urge the Commission to deny the Petition for Forbearance.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

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## **CERTIFICATE OF SERVICE**

I, Meena Joshi, do certify that on October 12, 2005, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and electronically mailed to the following:

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